or the Secretary) under the Packers and Stockyards Act, 1921 (Title 7, Chap. 9, U. S. Code), and doing business as market agencies engaged in the buying and selling of live stock on a commission basis at the Union Stock Yards, Chicago, Illinois, which yards has been ascertained by the Secretary to be a "stockyard" as defined in said Act and which has been posted as such.

2. Each of the petitioners has his or its principal office or principal operating office in the judicial district and division wherein this suit is brought; and the subject matter about which the petitioners and plaintiffs complain arose in the division and district wherein this suit is brought.

3. The United States of America; Henry A. Wallace, Secretary of Agriculture; Homer S. Cummings, Attorney General; and Michael Igoe, United States District Attorney for the Northern District of Illinois, are made respondents and defendants in this action pursuant to the provisions of said Packers and Stockyards Act, 1921; the Commerce Court Act (36 Stat. at L. 539, approved June 18, 1910); and the District Court Jurisdictional Act, a part of
8 the Deficiencies Appropriation Act (38 Stat. at L. 208, 219, 221), approved October 22, 1913, and amendments thereof. The jurisdiction of this Court arises from said statutes and laws; and also because this is a suit of a civil nature wherein the matter in controversy exceeds the sum or value of Three Thousand Dollars ($3,000) exclusive of interest and costs, and arises under the constitution or laws of the United States, the correct decision of this suit depending, in whole or in part, upon the construction and application of the Constitution of the United States, particularly the Fifth Amendment thereof.

4. The petitioners and plaintiffs bring this action in equity against the defendants for the purpose of enjoining and restraining the defendants, and each of them, from interfering civilly by suspension of the registration of the petitioners or by the exaction of penalties or forfeitures, or criminally by prosecution, with the publication, demands for, and collection of rates and charges lawfully established by the plaintiffs and petitioners in a schedule or tariff effective November 1, 1935.

5. After the enactment of the Packers and Stockyards Act, 1921, Chicago Union Stock yards was posted by the then Secretary of Agriculture under the provisions of said Act as a stockyard within the terms and provisions of said Act. Also, subsequent to the enactment of said Packers and Stockyards Act, 1921, the Chicago Live Stock Exchange (a trade association whose members comprise commission merchants and other market agencies), and all market agencies, members thereof, including some or all of the petitioners, agreed with the then Secretary of Agriculture that in lieu of
9 the formal procedure and hearing provided for by the Packers and Stockyards Act, 1921, that rates, charges, and practices found to be just and reasonable by certain arbitrators and recommended by them, would be adopted by the Chicago Live Stock

Exchange and the members thereof upon approval by the Secretary of Agriculture. Pursuant to said arbitration, and after lengthy investigation and hearing, a schedule of rates, charges, and practices was prescribed and found by said arbitrators, approved by the then Secretary of Agriculture, and adopted by the Chicago Live Stock Exchange and the members thereof. The tariff or schedule so recommended, prescribed, and adopted has remained in effect, without substantial alteration, save as hereinafter set forth, since September 1923; and the petitioners and plaintiffs and others similarly situated have, since that date, adopted, followed, and used the said schedule.

6. On September 23, 1932, the then Acting Secretary of Agriculture entered an order of inquiry and notice of hearing against the market agencies at Chicago Union Stock Yards, wherein it was directed that an inquiry be made for the purpose of determining the lawfulness of any and all rates and charges of the petitioners. Pursuant to said Order and Notice, a hearing was had before an examiner purporting to act under and by the authority of the Secretary; and oral argument was had on December 13, 1933, before the Secretary.

7. On the 8th day of January 1934 the Secretary executed and issued his Proceedings, Findings of Fact, Conclusion, and Order. By said Order of January 8, 1934, a schedule of purported reasonable rates, charges, and classifications was prescribed effective thirty (30) days thereafter. After the denial of a petition for rehearing, the schedule of rates and charges of the Order of January 8, 1934, was slightly modified by an Order entered March 12, 1934, the schedule of rates, charges, and practices of said Order to be effective on and after April 20, 1934. On April 9, 1934, the petitioners and others filed an amended petition for rehearing which was denied by the Secretary on April 12, 1934.

8. On April 18, 1934, there was filed in this Court by some of the petitioners herein and others, a petition and complaint entitled "C. H. Acker, doing business as C. H. Acker & Company et al., vs. United States of America et al., Equity No. 13829", seeking to enjoin and restrain the enforcement by the defendants therein of the Order of January 8, 1934, and the Supplemental Order of March 12, 1934. Upon motion for preliminary injunction, this Court, on the 19th day of April, 1934, issued an interlocutory writ of injunction against the defendants upon the condition that the plaintiffs and petitioners impound with the Clerk of this Court the difference between the charges collected under the schedule of rates then in effect and the amount which would have been collected under the rates prescribed in the Order and Supplemental Order of the Secretary of Agriculture. Upon final hearing this Court entered a decree on March 19, 1935, dismissing the complaint and providing further that if an appeal should be taken to the United States Supreme Court within thirty (30) days, the interlocutory injunction theretofore granted, including the provisions in respect to the

impounding of funds, should continue in effect during the pendency of said appeal and until final disposition. Such appeal was prayed and allowed and a supersedeas granted continuing the interlocutory injunction in force upon the same conditions with respect to the impounding of excess charges. Said appeal is pending and undetermined.

11 9. The defendants in said cause No. 13,829 in equity in this Court, have faithfully and completely complied with the injunctional order and writ of this Court; and the petitioners and plaintiffs in said cause, who in the main are the petitioners and plaintiffs in this cause, have faithfully and fully complied with the orders of this Court with respect to the impounding of excess charges. There is now impounded with the Clerk of this Court the sum of Seven Hundred Forty-eight Thousand Nine Hundred Eighty-seven and 23/100 Dollars ($748,987.23).

10. The schedule of rates and charges prescribed by the Secretary's Order and Supplemental Order were the result of an investigation of the costs, volume of business, and receipts, for the years 1931 and 1932. Subsequent to those years, subsequent to the Order and Supplemental Order of the Secretary, and subsequent to the hearing and the decree of this Court, the receipts of live stock at the Chicago Union Stock Yards have decreased in volume until, for example, the receipts of live stock during August 1935, were the lowest of any August since the year 1882. Changed economic conditions, decreased volume of live stock, and decreased volume of receipts have created such hardship and caused such losses among the petitioners and plaintiffs that, acting pursuant to law, the petitioners and plaintiffs have filed and published a new schedule of rates effective November 1, 1935.

This the plaintiffs and petitioners were compelled to do in self-preservation for (1) as hereinafter alleged, the Secretary refused to act in the premises because litigation was pending to test the validity of the Secretary's Order and Supplemental Order in Bureau of Animal Industry Docket 402.

12 11. On September 18, 1935, attorneys representing the petitioners and plaintiffs brought to the attention of the Secretary, by personal conference with John R. Mohler, Chief of the Bureau of Animal Industry in the Department of Agriculture, the conditions in the Live Stock Commission business at the Chicago Union Stock Yards, arising from the decreased volume of receipts and other causes. The result of the conference is reflected in a letter of September 23, 1935 to the Secretary, which letter is in words and figures as follows:

SEPTEMBER 23, 1935.

Honorable HENRY A. WALLACE,
Secretary of Agriculture,
Washington, D. C.

DEAR SIR: On September 18th, Mr. John S. Boyd, who is attorney for market agencies at the Union Stock Yards in Chicago, and the

writer, representing Chicago Live Stock Commission men, called upon Dr. J. R. Mohler, Chief, Bureau of Animal Industry, in Washington. Our object was to bring again to his attention and to the notice of the Department of Agriculture, present conditions in the Live Stock Commission business in Chicago, its difficulties, and perhaps its inability to proceed with the now very much decreased volume of receipts. For example, the receipts of live stock during August 1935, were the lowest of any August since 1882 as we are informed. Because of this condition, we wished to discuss some practical arrangement agreeable to the Secretary of Agriculture for procuring an increase in rates for the immediate future.

Dr. Mohler advised us of his and the Department's familiarity with the condition of the Commission men and their business, and of his sympathetic attitude, but said nothing could be done because of the opinions of the Solicitor of the Department of Agriculture and of the Attorney General to the effect that as a legal matter, the Secretary could do nothing while litigation is still on. The litigation referred to is that of "Secretary of Agriculture v. C. H. Acker, doing business as C. H. Acker & Company et al.," now pending on appeal to the Supreme Court of the United States. Since the only impediment to action in the premises was the legal one indicated by Dr. Mohler we told him that we would endeavor to obtain an unleashing of it, and, to this end, and at his suggestion, we called
13 upon the Solicitor of the Department of Agriculture. He advised us to consult the Attorney General's office through calling upon Mr. John Dickinson.

We left with the Solicitor of the Department of Agriculture a "Memorandum on Right of Secretary to Establish a Tariff of Increased Rates Pending Litigation to Restrain the Enforcement of the Secretary's Orders dated January 8, 1934, and March 12, 1934", and then called upon Mr. Dickinson. Upon a mere statement of the proposition he advised us there could be no question about the Secretary's right to establish rates for the future, notwithstanding the litigation, as the statute in the matter was entirely clear. We reported this back to the Solicitor of the Department of Agriculture. He later told us that he had conferred with Dr. Mohler, with the result that Dr. Mohler advised that notwithstanding there was no legal impediment, that as a matter of policy the Department would not consider any increase of rates while the litigation is pending.

On the next forenoon, September 19th, we called at your office and there saw Mr. Milo Perkins, your administrative assistant. He felt that under the circumstances we should bring this subject directly to your attention. He advised that your day was extremely full and that you expected to leave town that evening. Under the circumstances it was thought best to send this letter, which Mr. Perkins kindly volunteered to bring before you. Regardless of opinions upon existing conditions under which the Live Stock Com-

mission men at Chicago were endeavoring to serve at the time of, and prior to, the entry of the Orders of January and March 1934, those conditions are much worse now. Some action must be taken. Perhaps the most convenient method for proceeding is for the Commission men to now file a new tariff, the consideration of which may be had in regular course.

We feel the situation is one which will appeal to you and we would like your attention to whatever you consider it proper and just to give it.

Yours very truly,

(Signed) GEO. I. HAIGHT.

GIH:FS

The response of the Department of Agriculture to the foregoing letter is in words and figures as follows:

14 DEPARTMENT OF AGRICULTURE,
Washington, September 30, 1935.

MR. GEORGE I. HAIGHT,
209 South La Salle Street,
Chicago, Illinois.

DEAR MR. HAIGHT: This will acknowledge receipt of your letter dated September 23, 1935, with which you enclosed a letter of the same date addressed to the Secretary respecting interviews you had with various Officials of this Department and of the Department of Justice in connection with the order of the Secretary in B. A. I. Docket No. 402, in which you urge that some action be taken, perhaps by the filing of a new tariff by the commission men for the consideration of the Department.

The statements in your letter and the suggestion you make have been carefully noted and considered. It is our view that the commission rate situation at the Chicago market should not be disturbed pending the determination of the suit brought by the market agencies to test the validity of the Secretary's order prescribing reasonable rates and charges for their services at that market.

Sincerely yours,

(Signed) MILO PERKINS,
Assistant to Secretary.

12. The Packers and Stockyards Act, 1921, provides for the filing and publication, under the provisions of the statute and under lawful regulations of the Secretary, by market agencies at any stockyards under the Act, of new schedules of rates and charges or amendments to old schedules, the Act requiring ten days' notice to the Secretary and to the public by filing with the Secretary and publishing in the manner provided such new schedule or amended schedule. Upon the filing and publication of such new schedule or such amended schedule, the Secretary is empowered by the Act to enter
15 upon a hearing concerning the lawfulness of such rates and

charges and pending such hearing to suspend the proposed schedule or proposed amended schedule for a limited period of time pending such hearing and a determination by the Secretary. If a schedule filed and published in accordance with the statute is not suspended in accordance with the Act, it becomes effective, by the terms of the Act, upon the effective date provided in such schedule; and thereafter the market agency or agencies who filed and published said schedule are forbidden by the Act to charge, demand, or collect a greater or less or different compensation for their services than the rates and charges specified in the schedule so filed. Whoever fails to comply with Packers and Stockyards Act, 1921, in this respect is liable to a penalty of not more than Five Hundred Dollars ($500) for each offense and whoever wilfully fails to comply is liable upon conviction to a fine of not more than One Thousand Dollars ($1,000) or imprisonment of not more than one year, or both.

13. The plaintiffs and petitioners being unable to obtain relief and increased rates from the Secretary of Agriculture as alleged in Paragraph 11 hereinabove, duly prepared, published, and submitted to the Secretary for filing, a schedule or tariff of rates superseding all previous tariffs and amendments thereto, said schedule bearing publication date October 19, 1935; and the effective date of November 1, 1935. Such schedule was prepared, published, and submitted for filing in full and complete compliance with all provisions of Packers and Stockyards Act, 1921, and the General Rules and Regulations of the Secretary of Agriculture. A photostatic copy of such schedule is attached hereto marked Exhibit A.

16 All rates and charges provided in said tariff or schedule, Exhibit A, are just, reasonable, and non-discriminatory.

14. Said schedule was received for filing by the Department of Agriculture on October 19, 1935, as appears from the stamp of the Bureau of Animal Industry of the Department of Agriculture appearing upon Exhibit A. The Secretary of Agriculture unlawfully, arbitrarily, capriciously and without justification, refused to retain the proposed new schedule of rates and charges upon the grounds—

(1) "that once the Secretary, in compliance with the Act, has prescribed a schedule of rates and charges for a particular market, no change in those rates and charges can be made except by the Secretary or by a court of competent jurisdiction in a proper proceeding"; and

(2) "The schedule is also rejected because of pending litigation involving the validity of the above-mentioned orders (in Bureau of Animal Industry Docket 402)."

The Secretary thereupon returned the schedule submitted for filing to the plaintiffs and petitioners in a letter dated October 26, 1935, which is in words and figures, as follows:

DEPARTMENT OF AGRICULTURE,
Washington, October 26, 1935.

Mr. E. M. HUGHES,
Secretary The Chicago Live Stock Exchange,
Union Stock Yards, Chicago, Illinois.

DEAR MR. HUGHES: Receipt is acknowledged of your letters of October 17, to me and to Doctor Mohler, with which you transmitted on behalf of commission firms at the Chicago market, members of the Chicago Live Stock Exchange, copies of a schedule of rates for buying and selling livestock on a commission basis, to become
17 effective November 1, 1935.

It is noted that this schedule sets out rates and charges other than those set forth in the orders issued by the Secretary of Agriculture on January 8, 1934, and March 12, 1934, in B. A. I. Docket No. 402, prescribing rates and charges for stockyard services on the Chicago Stock Yards. Those orders were based upon careful consideration of the evidence adduced at an exhaustive hearing. The order of March 12 was made after consideration of a petition for rehearing filed by the market agencies on February 7, 1934, and substantially increased the rates prescribed in the order of January 8. An amended petition for rehearing was denied April 9, 1934. In accordance with the provisions of the Packers and Stockyards Act, 1921, the orders specifically directed that no "market agency shall publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge hereinbefore determined to be just, reasonable, and non-discriminatory for the furnishing of such service." Severe penalties for violations of such orders are imposed by the act. The Secretary will insist upon compliance with his orders.

The Department administratively construes the Packers and Stockyards Act, 1921, to mean that once the Secretary, in compliance with the Act, has prescribed a schedule of rates and charges for a particular market, no change in those rates and charges can be made except by the Secretary or by a court of competent jurisdiction in a proper proceeding. The mere proffer to file a new schedule of different rates and charges does not require the Secretary to receive and file such schedule.

The schedule is also rejected because of pending litigation involving the validity of the above-mentioned orders. The market agencies sought to enjoin the enforcement of those orders by suit filed in a Federal District Court of three judges. The court, on December 31, 1934, sustained the orders. The market agencies have taken steps to appeal the case to the Supreme Court of the United States. It is not deemed wise to receive and file the proposed new schedule of rates and charges which are in conflict with those found by the court to be fair to the market agencies.

Your attention is invited to the fact that the schedule submitted does not comply with the provisions of Regulation 3(a) of the

rules and regulations under the Packers and Stockyards Act in that it is not properly numbered.

The schedule submitted with your letter is herewith returned.

Very truly yours,

(Signed) H. A. WALLACE,
Secretary.

Enclosure:

Schedule (Original and 2 copies).

18 15. The petitioners and plaintiffs allege that having made full compliance with the provisions of Packers and Stockyards Act, 1921, and with the General Rules and Regulations of the Secretary of Agriculture thereunder, in the publication and submission for filing of a schedule of just, reasonable, and non-discriminatory rates and charges, the refusal of the Secretary to retain such schedule is void and of no effect and that such schedule is properly filed; and that the duties of the plaintiff market agencies in respect to the filing of said schedule were performed upon the delivery of such schedule to the Secretary to be kept upon file and that the arbitrary and unreasonable failure of the Secretary to perform his duty in the retaining of such schedule is a nugatory act.

16. The petitioners and plaintiffs allege that it was the duty of the Secretary, upon the submission of said schedule for filing, if he believed the rates and charges therein contained to be unjust, unreasonable or discriminatory, to at once suspend such schedule, as provided by the Act, in order that a hearing and determination might be made whether such rates and charges were just, reasonable, and non-discriminatory. The failure and refusal of the Secretary to follow the law in this regard and instead to take the actions and make the threats aforesaid was unlawful, arbitrary, capricious and without justification.

19 17. By reason of the filing and publication in full compliance with the law and with the regulations of the Secretary of Agriculture of the schedule of rates and charges contained in Exhibit A, such schedule and tariff by operation of law is now established to become effective on November 1, 1935, and the petitioners and plaintiffs are compelled, under the provisions of Packers and Stockyards Act, 1921, to put such schedule of rates and charges into effect and in the event of their failure to do so, are made liable to severe civil penalties or forfeitures and severe fine or imprisonment, namely: a penalty of not more than Five Hundred Dollars ($500) for each offense and not more than Twenty-five Dollars ($25) for each day it continues to accrue to the United States and which may be recovered in a civil action brought by the United States; and a fine of not more than One Thousand Dollars ($1,000) or imprisonment for not more than one year, or both, upon conviction for wilful failure to comply with the provisions of the Act.

18. On the other hand, the Secretary threatens to prosecute the plaintiffs and petitioners and to recover from them forfeitures to the United States in the sum of Five Hundred Dollars ($500) for each

offense, each day constituting a separate offense, for failure to obey the Orders of the Secretary of January 8, 1934, and March 12, 1934, in Bureau of Animal Industry, Docket No. 402. It is the duty of the District Attorney of the Northern District of Illinois and of the Attorney General of the United States to prosecute civilly for the recovery of penalties and forfeitures and to prosecute criminally for fines and imprisonment. The Secretary further is empowered to and may endeavor to suspend the registration of the plaintiffs and petitioners for their alleged violations of Packers and Stockyards Act, 1921.

19. The plaintiffs and petitioners are in the dilemma of being required under the Act to put into operation on November 1, 1935, the schedule hereto attached and marked "Exhibit A", lawfully adopted, filed, and published, under the pain of fines, imprisonment, and forfeitures for failure so to do; and on the other hand are being threatened by the Secretary with further and other fines and forfeitures for putting such schedule into effect.

20. The plaintiffs and petitioners charge that if the Packers and Stockyards Act, 1921, permits and is interpreted to authorize the Secretary, as in his letter of October 26, 1935, is stated, to refuse to file a lawfully adopted, published and submitted schedule and to reject such schedule on the ground that litigation is pending and on the ground that no change in rates may be made except by the Secretary, the act is unconstitutional and violative of the provisions of the United States constitution in that it empowers an administrative officer to issue orders and make determinations without investigation or hearing, and upon his whim or caprice and by his arbitrary action to nullify the Acts of Congress, thereby depriving market agencies subject to the Act, of life, liberty, or property without due process of law and confiscating the property of such market agency.

21. Wherefore petitioners pray:

(a) That process issue immediately out of and under the seal of this Court directed to said defendants, United States of America; Henry A. Wallace, Secretary of Agriculture of the United States of America; Homer S. Cummings, Attorney General of the United States of America; and Michael Igoe, United States District Attorney for the Northern District of Illinois, Eastern Division, requiring said defendants, and each of them, on a day certain to be specified in said process, to be and appear before this Court and to answer this petition and bill, but not under oath, answer under oath being hereby expressly waived;

(b) That this Court, or a Court constituted as required by the Laws of the United States, be convened and that said Court so constituted and convened, shall hear this petition and bill and all motions, petitions, proceedings, or hearings properly arising therefrom or thereunder;

(c) That upon the filing of this petition and bill, a Judge of this Court shall call to his assistance two other Judges, one of whom shall be a Circuit Judge;

(d) That upon the filing of this petition and bill and the convening of a properly constituted Court, that the Court grant an interlocutory injunction restraining and enjoining the defendants, and each of them, from enforcing or threatening to enforce the Orders of the Secretary of Agriculture in Bureau of Animal Industry Docket 402; and from interfering in any manner, civil or criminal, with the collection of rates and charges specified in the schedule or tariff attached as Exhibit A to this petition and complaint, and from threatening to interfere with the collection of the rates and charges specified in such schedule, and enjoining and restraining the Secretary of Agriculture from suspending the registration of any of the petitioners and plaintiffs because of his or its collection of the rates and charges in such schedule,—all until the further order of the Court;

22 (e) That this Court upon final hearing make such interlocutory injunction permanent;

(f) That the plaintiffs have and recover of the defendants the proper costs of this suit;

(g) That petitioners have such other and further relief in the premises as to the Court may seem just and equitable.

ALAN F. WILSON,
For the Petitioners, Frank Connor, Alan F. Wilson, Charles G. Smith, and M. B. Morgan, a partnership, doing business as John Clay & Company.

GEO. I. HAIGHT,
JOHN S. BOYD,
M. K. HOBBS,
Solicitors for all the Petitioners.

[*Duly sworn to by Alan F. Wilson; jurat omitted in printing.*]

23 *Exhibit A to petition and complaint*

United States Department of Agriculture

Bureau of Animal Industry

The Chicago Live Stock Exchange

Schedule of rates at the Union Stock Yards, Chicago, Illinois, issued Oct. 19, 1935. Effective Nov. 1, 1935.

This Tariff supersedes all Tariffs and amendments heretofore filed for the buying and selling of live stock.

DEFINITIONS

(1) A CONSIGNMENT, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day.

(2) A CONSIGNMENT, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

(3) A DRAFT is all those animals in one consignment weighed as a single sales or purchase classification.

(4) A PERSON is an individual, a partnership, a corporation, and/or association of any such acting as a unit.

(5) CALVES are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

(6) LIGHT WEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

(7) MEDIUM WEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 801 to 1,200 pounds.

(8) HEAVY WEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 1,201 pounds or over.

(9) PIGS are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

(10) HOGS are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

24 *Selling charges*

SECTION A. CATTLE AND CALVES

Calves:	
Consignments of one head	50c per head
Consignments of more than one head:	
1 to 20 head inclusive	40c per head
Each head over 20	20c per head
Lightweight cattle:	
Consignments of one head	80c per head
Consignments of more than one head:	
1 to 20 inclusive	70c per head
Each head over 20	60c per head
Mediumweight cattle:	
Consignments of one head	90c per head
Consignments of more than one head:	
1 to 20 head inclusive	80c per head
Each head over 20	70c per head
Heavyweight cattle:	
Consignments of one head	$1.00 per head
Consignments of more than one head:	
1 to 20 head inclusive	90c per head
Each head over 20	80c per head

SECTION B. SWINE

Pigs:	
Consignments of one head	35c per head
Consignments of more than one head:	
1 to 40 head inclusive	20c per head
Each head over 40	10c per head
Hogs:	
Consignments of one head	45c per head
Consignments of more than one head:	
1 to 40 head inclusive	30c per head
Each head over 40	15c per head

SECTION C. SHEEP OR GOATS

Sheep or goats:	
Consignments of one head	35c per head
Consignments of more than one head:	
For the first 10 head in each 300 head	30c per head
For the next 50 head in each 300 head	15c per head
For the next 60 head in each 300 head	6c per head
For the next 130 head in each 300 head	4c per head
For the next 50 head in each 300 head	1c per head

EXTRA SERVICE CHARGES

The following extra-service charges are applicable to each consignment:

For each additional weight draft over 3, on account of sales classification	15c
For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1	5c

SECTION D. BUYING CHARGES

Cattle bought in carload lots for either beef or feeding purposes, 50c per head, minimum $10.00 per carload, maximum $15.00 per carload. Pick-up cars of cattle where bought and picked up in three or more lots the commission shall be $15.00 per carload. Bulls $15.00 per carload. Milkers and springers $1.00 per head. Mixed carloads of cattle, including milkers and springers, the regular charge of $1.00 per head will be made for milkers and springers, and 50 cents per head for others not to exceed $20.00 per carload.

25 Veal calves, single deck carload $15.00; double deck carload $20.00.

For all cars of hogs weighing on an average of over 140 pounds, shipped in either single or double deck cars, the charge shall be $10.00 per car. For all hogs averaging 140 pounds or less, shipped in either single or double deck cars, the charge shall be $15.00 per car.

Sheep or goats for slaughter purposes, single deck carloads $10.00; double deck carloads $15.00. Sheep or goats for feeding or breeding purposes, single decks $11.00; double decks $16.00.

In instances where less than a carload of cattle, calves, hogs, sheep, or goats, are purchased; on less than 14 head of cattle shipped in one car, the commission shall be 90c per head, and provided, that on less than 40 calves shipped in one car, the commission shall be 40c per head, and provided, that on less than 40 hogs shipped in one car, the commission shall be 30c per head, and provided, that on less than 50 head of sheep or goats shipped in one car, the commission shall be 20c per head.

Provided, however, that the charges to be collected for buying livestock shall in no instance exceed those for selling as provided for in this tariff.

The purchase of any of the foregoing classes of stock, when paid for by the market agency, shall, if assistance has been rendered by it, its agents or employees in making the purchase, be deemed a

purchase within the meaning of this section, and charged for at the above named rates.

E. M. Hughes,
E. M. Hughes,
Secretary, The Chicago Live Stock Exchange, On Behalf of Each Firm or Market Agency Affiliated With the Exchange.

Live Stock Exchange Building, Chicago, Illinois (address of all the undersigned on this and following page):

Schultz, L. S., Comm. Company, by C. H. Schultz.
Walters & Dunbar, by Jas H. Dunbar.
Stafford Bros., by S. B. Stafford.
Kuenster Live Stock Comm., by E. H. Kuenster.
Miller, White & Woods, by J. L. Jones, Treas.
Peterson, Turnbull & Co., by W. A. Peterson.
W. O. Jennings & Co., by W. O. Jennings.
Martin Born & Co., by W. S. Burmister.
E. F. Woelfer & Co., by E. F. Woelfer.
26 Max Farley.
McCausland, Hoag & Vaughan, per E. L. Vaughan, Prest.
Alexander, Conover & Co., by George S. Conover, Treas.
National Live Stock Com. Co., by E. G. Fulkerson, Pres.
Hatch, L. S., Com. Co., by Fred Hatch.
Lawler Bros. & Co., by E. J. Lawler.
Rice Bros., by Chas. R. Rice.
St. John, Compton, Dunbar Co., by R. E. Compton.
Murray & McDowell, by A. R. Jenkins.
Northwestern Live Stock Com. Co., by D. M. Woods, Treas.
Johnson Commission Company, by R. E. Johnson.
Lyman Keys Commission Co., by Lyman Keys.
27 Clark, Bowles & Co., by E. A. Clark.
Conklin Bros. Com. Co., by Morton Conklin, Pres.
Alex Rinderle Co., by A. E. Rinderle.
Silas Palmer & Sons, by W. H. Palmer.
George W. Hull.
Joseph F. Nash.
L. Spencer and Company, L. Spencer.
Moon and Unthank, by P. B. Unthank.
Filler Wilson & McClelland., by P. A. Filler, V. P.
John Patterson & Son, by W. C. Patterson.
Wm. R. Smith & Son, by J. C. Eastin.
Starrett L. S. Comm. Co., by M. E. Peschong.
Rosenbaum Bros. & Co.: by A. Wertheimer, President.
H. D. Copeland & Company, by C. H. Boortroyd, President.
Wm. Gentleman & Sons, by Wm. Gentleman.
28 J. A. Frazier & Sons, by Wm. Gentleman.
Standard Live Stock Commission Co., by Ray Alvin Keys, Pres.
Frank Keys, Inc., Ray Alvin Keys, Pres.

Roberts and Mills Company, by W. A. Roberts.
Geo. M. Brounson Co., by Geo. M. Brounson.
Swiney Brothers, by F. E. Swiney.
Mullen Commission Company, by Norman E. Barnes.
Mutual Live Stock Com. Co., by H. H. Castle, Pres.
Art Humburt Commission, by Arthur Humburt.
Nalley L. S. Com. Co., by Will J. Nalley.
Cochran Henneberry & Wallace, by R. W. Wallace.
Brott Live Stock Com. Co., by W. H. Brott.
Irvine H. Murray.
29 C. H. Moberly.
H. O. Thompson & Co., per H. O. Thompson.
Quinn Com. Company, per John E. Quinn.
Greenwoood Commission Co., by Geo. J. Greenwood.
T. K. Polley & Co., by T. K. Polley.
Sherwood & Son.
R. H. Sherwood.
Iowa Live Stock Com. Co., by F. K. Surbect, Pres.
Dunbar, St. John & Company, by Harlow C. Dunbar.
Gillogly & Co., by R. E. Gillogly.
Schroeder L. S. Com. Co., by A. C. Schroeder.
Sarsfield, Schrock and Kuenster, by J. P. Sarsfield.
Merrion & Wilkins, J. L. Merrion.
Roach L. S. Com. Co., by W. S. Roach.
30 G. C. Peters and Company, by G. C. Peters.
Ennes Sider Buel Com. Co., C. L. Buel.
Adler Sons & Co., by A. E. Adler.
J. A. Strachan & Co., by J. A. Strachan.
C. W. Hart Com. Co., by C. W. Hart.
Dolan Ludeman & Co., by P. T. Dolan.
Halpin, L. S. Com. Co., by F. J. Halpin.
Adams, Corrick and Keleher, by J. M. Corrick.
Callahan Live Stock Commission Company, by M. J. Callahan.
Lester W. Hatch & Co., by Lester W. Hatch.
Haime & Reneker, by G. J. Reneker.
31 Dolan Sinnard and Co., by T. J. Sinnard.
Central Live Stock Commission Company, by M. A. McDermott.
Norris and Dunning, by H. L. Dunning.
Wood Brothers, by F. E. Bent.
J. B. Hatch and Co., by J. B. Hatch.
Hefner Commission Co., by F. A. Hefner.
Glen K. Wood & Company, per Glen K. Wood.
Ingwersen, Mosier & Ingwersen, Inc., by D. C. Mosier.
Abe Burnett & Co., by Charles L. Burnett.
Geo. W. Von Berner.
Kirby Bros., L. S. Com. Co., by Donald J. Kirby.
Swanson, Gilmore & Castenholz, By A. Gilmore.

Minteer, Hubbard & Co., per G. Hixon.
32 W. E. Young & Co., by W. E. Young.
A. P. Schmal.
Benton & Co., L. S. Com., by G. A. Benton.
Sheldon Comm. Co., by F. W. Sheldon.
Stockmen's L. S. Com. Co., by Samuel Kent, Pres.
Will C. Wood and Company, by Will C. Wood.
Harry L. Carpenter, by E. M. Hughes.
David C. Wagner.
Feldes Commission Company, by Erwin J. Feldes.
I. O. Fry.
Holloway & Ogren, by E. Holloway.
Wm. Daniel.
Baker, Heyne & Co., by E. H. Baker.
33 E. J. Gibbons and Company, by E. J. Gibbons.
Chas. E. Harding Co., by Chas. E. Harding, Jr.
Bowles Live Stock Com. Co., by J. P. Bowles, Prest.
Charles O. Robinson Company, by C. O. Robinson.
Barton, Looney & Kennedy, by Tom Looney.
Fred Freeman.
Hafner Nixon Co., by [illegible] Hafner.
C. E. Nixon.
C. E. Nixon & Co. (Inc.), by C. E. Nixon, President.
Drovers Commission Co., by P. E. Wroe.
Knettle Bros., by E. Knettle.
34 E. Egan & Company, by E. H. Egan.
A. J. Labarthe.
Walter Brothers, by Ralph A. Walter.
Ettlinger, T. S. Com. Co., by J. T. Ettlinger.
Louis Armbrecht Commission Co., by Louis Armbrecht.
Clarence M. Brown.
John Clay and Company, by Alan F. Wilson.
C. A. Keeman, by Alan F. Wilson.
Guy L. Wheeler & Co., by Guy L. Wheeler.

36 In United States District Court

[Title omitted.]

Affidavit of E. M. Hughes

Filed Nov. 1, 1935

STATE OF ILLINOIS,
County of Cook, ss:

E. M. HUGHES, being first duly sworn, on oath deposes and says that he is an adult citizen of the United States residing in the City of Chicago, State of Illinois; that a printed copy of the schedule

of rates and charges of the live stock commission agencies at the Chicago Union Stock Yards, which schedule is attached as Exhibit A to the Bill of Complaint herein, was posted on October 17, 1935, and has since remained so posted, upon the bulletin board on the first floor of the Live Stock Exchange Building, Union Stock Yards, Chicago, Illinois; that a printed copy was posted October 17, 1935, and has since remained so posted, on the wall of the office of the Secretary of the Chicago Live Stock Exchange on the ninth floor of the aforesaid building; that the aforesaid places are conspicuous public places; that in addition each market agency who subscribed the said schedule has, since October 18, 1935, kept posted in his or its office in a conspicuous public place the aforesaid schedule;

37 that on October 17, 1935, your affiant mailed, for filing, to the Bureau of Animal Industry of the Department of Agriculture, Washington, D. C., the original of said schedule signed by the subscribing market agencies, together with two copies thereof; said original and copies were received by the Bureau and Department on October 19, 1935; that said schedule plainly states all rates and charges in detail, and also states rules and regulations which in any manner affect or determine the rates or charges; that the said schedule complies with the regulations of the Secretary in its physical form and size and in its division in sections for the various classes of services furnished; that said schedule bears the publication date October 19, 1935, on which date it was received by the Department of Agriculture and also bears the effective date November 1, 1935, and that said schedule was filed, posted, and published more than ten (10) days before the effective date thereof.

A printed copy of the schedule referred to herein is attached hereto.

Further affiant saith not.

E. M. HUGHES.

Subscribed and sworn to before me this 31st day of October 1935.

FRANCES SAVAGE,
Notary Public.

My Commission Expires: Oct. 4, 1936.

38 *Exhibit to affidavit*

United States Department of Agriculture

Bureau of Animal Industry

The Chicago Live Stock Exchange

Schedule of rates at the Union Stock Yards, Chicago, Illinois, issued Oct. 19, 1935. Effective, Nov. 1, 1935.

This Tariff supersedes all Tariffs and amendments heretofore filed for the buying and selling of live stock.

DEFINITIONS

(1) A CONSIGNMENT, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day.

(2) A CONSIGNMENT, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

(3) A DRAFT is all those animals in one consignment weighed as a single sales or purchase classification.

(4) A PERSON is an individual, a partnership, a corporation, and/or association of any such acting as a unit.

(5) CALVES are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

(6) LIGHTWEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

(7) MEDIUMWEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 801 to 1,200 pounds.

(8) HEAVYWEIGHT CATTLE are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 1,201 pounds or over.

(9) PIGS are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

(10) HOGS are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

Selling charges

SECTION A. CATTLE AND CALVES

Calves:	
Consignments of one head	50c per head
Consignments of more than one head:	
1 to 20 head inclusive	40c per head
Each head over 20	20c per head
Lightweight cattle:	
Consignments of one head	80c per head
Consignments of more than one head:	
1 to 20 head inclusive	70c per head
Each head over 20	60c per head
Mediumweight cattle:	
Consignments of one head	90c per head
Consignments of more than one head:	
1 to 20 head inclusive	80c per head
Each head over 20	70c per head
Heavyweight cattle:	
Consignments of one head	$1.00 per head
Consignments of more than one head:	
1 to 20 head inclusive	90c per head
Each head over 20	80c per head

SECTION B. SWINE

Pigs:	
Consignments of one head	35c per head
Consignments of more than one head:	
1 to 40 head inclusive	20c per head
Each head over 40	10c per head
Hogs:	
Consignments of one head	45c per head
Consignments of more than one head:	
1 to 40 head inclusive	30c per head
Each head over 40	15c per head

SECTION C. SHEEP OR GOATS

Sheep or goats:	
Consignments of one head	35c per head
Consignments of more than one head:	
For the first 10 head in each 300 head	30c per head
For the next 50 head in each 300 head	15c per head
For the next 60 head in each 300 head	6c per head
For the next 130 head in each 300 head	4c per head
For the next 50 head in each 300 head	1c per head

EXTRA SERVICE CHARGES

The following extra service charges are applicable to each consignment:

For each additional weight draft over 3, on account of sales classification	15c
For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1	5c

SECTION D. BUYING CHARGES

Cattle bought in carload lots for either beef or feeding purposes, 50c per head, minimum $10.00 per carload, maximum $15.00 per carload. Pick-up cars of cattle where bought and picked up in three or more lots the commission shall be $15.00 per carload. Bulls $15.00 per carload. Milkers and springers $1.00 per head. Mixed carloads of cattle, including milkers and springers, the regular charge of $1.00 per head will be made for milkers and springers, and 50 cents per head for others not to exceed $20.00 per carload.

39 Veal calves, single deck carload $15.00; double deck carload $20.00.

For all cars of hogs weighing on an average of over 140 pounds, shipped in either single or double deck cars, the charge shall be $10.00 per car. For all hogs averaging 140 pounds or less, shipped in either single or double deck cars, the charge shall be $15.00 per car.

Sheep or goats for slaughter purposes, single deck carloads $10.00; double deck carloads $15.00. Sheep or goats for feeding or breeding purposes, single decks $11.00; double decks $16.00.

In instances where less than a carload of cattle, calves, hogs, sheep or goats, are purchased; on less than 14 head of cattle shipped in one car, the commission shall be 90c per head, and provided, that on less than 40 calves shipped in one car, the commission shall be 40c per head, and provided, that on less than 40 hogs shipped in one car, the commission shall be 30c per head, and provided, that on less than

50 head of sheep or goats shipped in one car, the commission shall be 20c per head.

Provided, however, that the charges to be collected for buying livestock shall in no instance exceed those for selling as provided for in this tariff.

The purchase of any of the foregoing classes of stock, when paid for by the market agency, shall, if assistance has been rendered by it, its agents or employees in making the purchase, be deemed a purchase within the meaning of this section, and charged for at the above named rates.

E. M. HUGHES,
Secretary, The Chicago Live Stock Exchange,
On Behalf of Each Firm or Market Agency
Affiliated With the Exchange.

Live Stock Exchange Building, Chicago, Illinois:

Adams, Corrick and Keleher, Adler, Sons & Co., Alexander, Conover & Company, Inc., Louis Armbrecht Commission Co., Baker, Heyne & Co., Barton, Looney & Kennedy, Benton & Co., L. S. Com., Bowles Live Stock Com. Co., Brott Live Stock Com. Co., Clarence M. Brown, Geo. M. Brownson & Co., Abe Burnett & Co., Callahan Live Stock Commission Company, Harry L. Carpenter, Central Live Stock Commission Company, Clark, Bowles & Co., John Clay and Company, Cochran, Henneberry & Wallace, Conklin Bros. Com. Co., H. D. Copeland & Co., Wm. Daniel, Dolan, Ludeman & Co., Dolan, Sinnard and Co., Drovers Commission Co., Dunbar, St. John & Company, E. Egan & Company, Ettlinger L. S. Com. Co., Evans, Snider, Buel Com. Co., Max Farley, Feldes Commission Company, Filler, Wilson & McClelland, J. A. Frazier & Sons, Fred Freeman, I. O. Fry, Wm. Gentleman & Sons, E. J. Gibbons and Company, Gillogly & Co., Greenwood Commission Co., Hafner Nixon Co., Haime & Reneker, Halpin L. S. Com. Co., Chas. E. Harding Co., C. W. Hart Com. Co., J. B. Hatch and Co., Lester W. Hatch & Co., Hatch L. S. Com. Co., Hefner Commission Co., Holloway & Ogren, George W. Hull, Art Humbert Commission, Ingwersen, Mosier & Ingwersen, Inc., Iowa Live Stock Com. Co., W. O. Jennings, Johnson Commission Company, Frank Keys, Inc., Lyman Keys Commission Co., Kirley Bros. L. S. Com. Co., C. A. Kleman, Knettle Bros., Kuenster Live Stock Comm., A. J. LaBarthe, Lawler Bros. & Co., Martin Bros. & Co., McCausland, Hoag & Vaughn, Merrion & Wilkins, Miller, White & Woods, Minteer, Hubbird & Co., C. H. Moberly, Moon and Unthank, Mullen Commission Company, Murray & McDowell, Irvine H. Murray, Mutual Live Stock Com. Co., Nally L. S. Com. Co., Joseph F. Nash, National Live Stock Com. Co., C. E. Nixon, C. E. Nixon & Co., Inc., Norris and Dunning, Northwestern Live Stock Com. Co., Silas Palmer & Sons, John Patterson & Son, G. C. Peters & Company, Peterson, Turnbull & Company, T. K. Polley & Co., Quinn Commission Company, Rice Bros., Alex Rinderle Co., Roach L. S. Com. Co., Roberts and Mills Company, Charles O.

Robinson Company, Rosenbaum Bros. & Co., Sarsfield, Schrock and Kuenster, A. P. Schmal, Schroeder L. S. Com. Co., Schultz L. S. Comm. Company, Sheldon Comm. Co., Sherwood & Son, Wm. R. Smith & Son, L. Spencer & Company, Stafford Bros., Standard Live Stock Commission Company, Starrett L. S. Comm. Co., St. John Compton Dunbar Co., Stockmen's L. S. Com. Co., J. A. Strachan & Co., Swanson, Gilmore & Castenholz, Swiney Brothers, H. O. Thompson & Co., Geo. W. Von Berner, David C. Wagner, Walter Brothers, Walters & Dunbar, Guy L. Wheeler & Co., E. F. Woelfer & Co., Wood Brothers, Glen K. Wood & Company, Will C. Wood & Company, W. E. Young & Co.

40 In United States District Court

[Title omitted.]

Order convening statutory court

Nov. 1, 1935

Pursuant to the provision of Packers and Stockyards Act, 1921, and Section 47, Title 28, U. S. Code, on application to me by the plaintiffs in the above entitled cause to convene a Statutory Court and for an injunction, I hereby call to my assistance for the hearing of said application and cause Honorable Samuel Alschuler, a Judge of the Circuit Judge of Appeals of this Circuit, and the Honorable James H. Wilkerson, District Judge of the United States for the Northern District of Illinois.

Dated: November 1, 1935.

BARNES, *District Judge.*

41 In United States District Court for the Northern District of Illinois, Eastern Division

Equity No. 14900

ADAMS, CORRICK & KELEHER, ETC., ET AL.

vs.

UNITED STATES OF AMERICA, ET AL.

Before ALSCHULER, Circuit Judge, and WILKERSON and BARNES, District Judges

Opinion

Nov. 19, 1935

PER CURIAM: Under the present status of the case, there is reason to believe that:

(1) Under the Packers and Stockyards Act, 1921 (Title 7, U. S. C. A., Chap. 9), the market agencies are the primary rate makers for their services.

(2) The fact that the Secretary of Agriculture has acted in respect of the rates and charges of the plaintiffs does not deprive them of the right thereafter to initiate rates.

(3) The schedule of rates and charges tendered by the plaintiffs to the Secretary of Agriculture for filing on October 19, 1935, was properly tendered and should have been received and filed by the Secretary.

(4) The Secretary's contention that because of the pendency in the United States Supreme Court of an appeal from the decree of this court in Acker et al. v. United States et al., Equity No. 13829, no new schedule of rates may be presented to the Secretary for filing in his office until such appeal is determined, is untenable; and refusal of the Secretary to receive and file the schedule of rates and charges so tendered was arbitrary and without authority of law.

(5) Such refusal to receive and file did not destroy or affect the effectiveness of the filing of said schedule.

42 (6) The rates and charges, shown by the aforesaid schedule, on November 1, 1935, became and now are the lawful rates and charges for the stockyard services furnished by the plaintiffs, and will continue to be the lawful rates and charges for such services until they are suspended or changed in a manner prescribed or permitted by law.

Wherefore, it is concluded that a preliminary injunction, which will, during the pendency of this case, give effect to the foregoing should issue.

The court will, on Monday, November 25, 1935, at 2 o'clock P. M., hear counsel on the question as to whether such injunction should issue on terms and, if on terms, on what terms.

At the same time, counsel will present, in writing, their respective suggestions as to findings of fact and conclusions of law, and as to the form of the decretal order.

SAMUEL ALSCHULER,
United States Circuit Judge.
JAMES H. WILKERSON,
United States District Judge.
JOHN P. BARNES,
United States District Judge.

43 In United States District Court

[Title omitted.]

* *Statement, findings of fact, and conclusions of law*

Dec. 3, 1935

Upon the filing with the clerk of this court on October 31, 1935, of plaintiffs' verified bill of complaint, a statutory court was assembled consisting of three judges, two of them United States district judges in the Seventh Judicial Circuit, and one of them a United States circuit judge for the said Seventh Judicial Circuit, in which

court, on November 8, 1935, there was heard the application of plaintiffs for an interlocutory injunction, pending final hearing and disposition of the cause, restraining the defendants as in and by their said bill of complaint prayed; at which hearing the defendants appeared and resisted plaintiffs' said application for an interlocutory injunction.

Upon the hearing of such application there was before the court the plaintiffs' said verified bill of complaint, together with the affidavit of one Hughes specifying that on October 17, 1935, he posted in public places at and about the principal offices of the several
44 market agencies of plaintiffs, and on the bulletin board of the Live Stock Exchange Building at the Union Stock Yards, Chicago, Ill., and on the wall of the office of the Secretary of the Chicago Live Stock Exchange, a printed copy of a schedule of rates and charges of the livestock commission agencies at Union Stock Yards, as it is set forth in Exhibit A of said bill of complaint, and in said affidavit.

Upon the hearing of such motion for interlocutory injunction no other evidence, oral or documentary, was submitted by either party, and there was before the court nothing save the said verified bill of complaint and affidavit, except as there was considered the decree and orders in the case of Acker et al. v. United States of America et al., being case No. 13,829, therefore pending in said court, and heard and decided by a statutory court of three judges whose personnel was the same as it is in the instant cause.

Upon a consideration of the aforesaid instrumentalities, and for the purpose only of adjudication of the plaintiffs' said application for an interlocutory injunction herein, the court makes the subjoined findings of fact and conclusions of law.

Findings of fact

1. Plaintiffs are registered market agencies at the Union Stock Yards, Chicago, Illinois, which yard has been posted as a stockyard under Packers and Stockyards Act of 1921; and each of plaintiffs has its principal office in this judicial district and division.

2. The subject-matter of said bill of complaint arose and exists in this judicial district and division.

45 3. On January 8, 1934, the Secretary of Agriculture issued an order, and on March 12, 1934, a supplemental order, prescribing a schedule of rates and charges for the market agencies at the Union Stock Yards, Chicago.

4. On March 19, 1935, and theretofore, there was pending in the District Court of this district and division, before a statutory three-judge court, the bill of complaint brought by substantially all of the market agencies who in the instant suit are the plaintiffs, and wherein it was charged that the rates which had been prescribed by the Secretary of Agriculture on January 8, 1934, and by him supplemented on March 12, 1934, were unreasonable, arbitrary, and void; and on said March 19, 1935, the said statutory court, having

heard the said cause upon its merits, entered a decree dismissing said bill of complaint in accordance with findings of fact and conclusions of law made theretofore on December 31, 1934, by the said court; and thereafter, on motion of the defendants in said cause, the court allowed an appeal to the United States Supreme Court from its said decree of March 19, 1935, but continued in force an interlocutory injunction which the court had theretofore entered against enforcement of the rates and charges so prescribed by the Secretary of Agriculture, conditioned upon the deposit by the several market agencies with the clerk of this court of the difference between the rates and charges which would be collected under the schedule of rates previously in force and the reduced schedule of rates as prescribed by the schedule of January 8, 1934, as supplemented by the order of March 12, 1934, such deposits to be held by the clerk of this court for disposition in such manner as would ultimately be
46 adjudicated. Such order for appeal so granted on motion of the plaintiffs in that suit is still in force and effect, and from time to time orders have been entered by the court wherein that decree was entered, extending the time for filing in the United States Supreme Court the transcript of record upon such appeal.

5. On October 19, 1935, the plaintiffs tendered and submitted to the Secretary of Agriculture at Washington, D. C., for filing in his office, a schedule of rates and charges for services of market agencies at the Union Stock Yards at Chicago, to be effective on November 1, 1935, which rates and charges are in most instances materially higher than the rates and charges for such services as specified in the schedule of the Secretary of Agriculture of January 8, 1934, and his supplemental schedule of March 12, 1934, such schedule of rates and charges so tendered and submitted to the Secretary of Agriculture having theretofore been duly and publicly posted as required by law. The schedule of rates and charges so tendered and submitted to the Secretary of Agriculture is set forth in Exhibit A of the bill of complaint herein, and also in the Hughes affidavit above referred to.

6. The Secretary of Agriculture refused to retain and to file in his office the schedule of rates and charges thus tendered to him by plaintiffs herein for filing, and at once returned the schedule to the plaintiffs, stating as his ground for rejection of the schedule and refusal to file it:

(a) "'that once the Secretary, in compliance with the Act, has prescribed a schedule of rates and charges for a particular market, no change in those rates and charges can be made except by the Secretary or by a court of competent jurisdiction in a proper proceeding"; and

(b) "The schedule is also rejected because of pending litigation involving the validity of the above-mentioned orders (in Bureau of Animal Industry Docket 402)."

47 7. After the refusal of the Secretary of Agriculture to retain and to file said schedule and his return of it to the

plaintiffs, the Secretary gave no notice of suspension of the schedule of rates and took no action whatever to suspend the tendered schedule of rates, and has since then taken no action whatever to supersede or alter the rates and charges specified in such schedule so tendered him for filing.

8. If under the Packers and Stockyards Act the schedule of rates thus tendered to the Secretary of Agriculture for filing became effective on and after November 1, 1935, then in such case the plaintiffs were and are subject to prosecution and penalization if they did not put those rates and charges into effect. On the other hand, the Secretary of Agriculture and the United States District Attorney for the Northern District of Illinois maintain that the schedule of rates of January 8, 1934, as supplemented by the schedule of March 12, 1934, as theretofore fixed by the Secretary of Agriculture, remained and were and are the lawful rates, notwithstanding the schedule of rates tendered to the Secretary October 19, 1935; and there thus arose and exists a situation where the plaintiffs were and are threatened with prosecution, civil and criminal, whichever course they may adopt.

9. Immediate and irreparable injury and damage to plaintiffs will in all likelihood ensue unless an interlocutory injunction as prayed be ordered.

Conclusions of law

1. This court has jurisdiction of the subject-matter of this suit and of the parties thereto.

48 2. Under the Packers and Stockyards Act of 1921, the market agencies are the primary rate makers for their services.

3. The fact that the Secretary of Agriculture had previously acted to fix rates and charges of these market agencies does not thereafter deprive the market agencies of the right to initiate and file lawful rates for their services in the manner provided by the Packers and Stockyards Act, which thereupon become the lawful rates, subject to their suspension by the Secretary of Agriculture, and to being superseded by the Secretary, in manner and form as in said Packers and Stockyards Act provided.

4. Upon the facts appearing at the hearing of the application for the interlocutory injunction, the said schedule of rates, which was on October 19, 1935, tendered by plaintiffs to the Secretary of Agriculture for filing in his office, was properly tendered and should have been retained and filed in the office of the Secretary of Agriculture.

5. The rejection by the Secretary of Agriculture of the schedule of rates and charges tendered him by plaintiffs, and his refusal to file it, upon the grounds set forth in the findings of fact herein, was unreasonable, arbitrary, and without authority of law.

6. The filing in the office of the Secretary of Agriculture of a schedule of such rates lawfully tendered to him by the market agencies is a ministerial act; and he cannot, by arbitrarily refus-

ing to file the tendered schedule, render unlawful and ineffective a schedule of rates which, had it been filed, would have been the lawful schedule of rates and charges, unless thereafter suspended or superseded by the Secretary as provided by law.

49 7. The fact that at the time of the tender of the schedule of rates in question to the Secretary of Agriculture for filing, there was pending and undetermined in the United States Supreme Court an appeal from the decree of the District Court which had held valid a prior schedule of rates which had been fixed by the Secretary of Agriculture, did not, during such pendency, deprive market agencies of the right to initiate new rates so initiated by the market agencies being subject to suspension and supersession by the Secretary of Agriculture in manner and form as in said Packers and Stockyards Act provided.

8. Upon the record which is before us, the schedule of rates as posted and as tendered to the Secretary of Agriculture for filing on October 19, 1935, became effective on November 1, 1935, and from that date constituted the lawful rates and charges for the market agency services of the plaintiffs, unless and until such schedule of rates is suspended by the Secretary of Agriculture, or is by him, or otherwise, changed or superseded in manner and form as provided by law.

9. Plaintiffs may, and in all likelihood will, suffer irreparable injury and damage unless an interlocutory injunction as prayed be granted.

(Signed) SAMUEL ALSCHULER,
U. S. Circuit Judge.
JAMES H. WILKERSON,
U. S. District Judge.
JOHN P. BARNED,
U. S. District Judge.

CHICAGO, ILLINOIS, *December 3, 1935.*

50 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity No. 14900

J. M. CORRICK AND L. J. KELEHER, A PARTNERSHIP, ET AL.

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER S. CUMMINGS, ATTORNEY GENERAL, AND MICHAEL IGOE, UNITED STATES DISTRICT ATTORNEY FOR THE NORTHERN DISTRICT OF ILLINOIS

Order for interlocutory injunction

Dec. 3, 1935

This cause coming on to be heard upon the verified bill of complaint of the plaintiffs and an affidavit filed in support thereof, and

upon the motion of plaintiffs for the issuance of an interlocutory injunction herein restraining the defendants pendente lite from doing those things asked to be restrained in and by the said bill of complaint, and the court having heard the arguments of counsel, and being fully advised in the premises, finds that immediate and irreparable injury and damage to plaintiffs will likely ensue unless there be granted an interlocutory injunction as prayed.

It is therefore ordered by the court That a writ of injunction issue out of and under the seal of this court restraining and enjoining, until the further order of this court, the defendants, Henry A. Wallace, Secretary of Agriculture, Homer S. Cummings, Attorney General, and Michael Igoe, United States District Attorney for the Northern District of Illinois, and all the officers, attorneys, solicitors, agents, and representatives of the United States, and all other persons acting or claiming or assuming to act for and under the authority of the defendants, or any of them, from preventing or attempting to prevent, or from interfering with the plaintiffs and each of them in their several capacities as market agencies, from collecting, demanding, receiving, and retaining, the rates and
51 charges for their market agency stockyards services at the Union Stock Yards, in Chicago, Illinois, as they are fixed and prescribed by the schedule of rates and charges of plaintiffs which were tendered for filing to the Secretary of Agriculture October 19, 1935, to be effective November 1, 1935, a copy of which schedule is attached to the bill of complaint herein as Exhibit A thereof. And that each and all of such persons be restrained, until the further order of the court, from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action against the plaintiffs, or either or any of them, for the imposition or recovery of any penalties, fines, forfeitures, or imprisonment because of any demand for and collection of the rates and charges, or any of them, as in said schedule of rates and charges so effective November 1, 1935, is prescribed. And that the said Henry A. Wallace, Secretary of Agriculture, and any person or persons acting or assuming to act for or under him, be enjoined and restrained, until the further order of the court, from suspending the registration as market agencies of all or any of plaintiffs because of their, his, or its demand for, or collection of, the stockyards market agency rates and charges for services as prescribed and set forth in such schedule of rates and charges so effective November 1, 1935.

It is further ordered that, as a condition for the issuance of this injunction, the petitioners do forthwith enter into and file with the clerk of this court an injunction bond in the penal sum of Fifty Thousand Dollars ($50,000), with security to be approved by
52 the court, conditioned that in case it is ultimately adjudicated that such schedule of rates and charges so tendered to the Secretary of Agriculture on October 19, 1935, did not become and was not the lawful schedule of rates and charges for plaintiffs' stockyards market agency services, then each of the said plaintiffs

shall promptly repay to the several shippers to them of live stock whereon there shall have been collected by plaintiffs, or any of them, the rates and charges specified in the said schedule so tendered to the Secretary of Agriculture on October 19, 1935, the several amounts by which the rates and charges so collected for stockyards market agency services shall exceed the rates and charges which, but for said schedule of rates so tendered to the Secretary of Agriculture on October 19, 1935, would have been the lawful rates and charges for the plaintiffs' stockyards market agency services; and further conditioned as this court may approve.

SAMUEL ALSCHULER,
U. S. Circuit Judge.
JAMES H. WILKERSON,
U. S. District Judge.
JOHN P. BARNES,
U. S. District Judge.

CHICAGO, ILLINOIS, *December 3, 1935.*

53 In United States District Court

[Title omitted.]

Petition for appeal

Filed Dec. 18, 1935

The defendants herein considering themselves aggrieved by the order for interlocutory injunction entered by this Court in the above cause on the 3rd day of December 1935, pray that they may be permitted to take an appeal therefrom to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith, and the defendants pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the order for interlocutory injunction was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

JOHN DICKINSON,
Assistant Attorney General.
WENDELL BERGE,
Special Assistant to the Attorney General.

Dated: December 16, 1935.

54 In United States District Court

[Title omitted.]

Assignment of errors

Filed Dec. 18, 1935

1. The Court erred in concluding as a matter of law that the fact that the Secretary of Agriculture had previously acted to fix rates

and charges for the plaintiffs did not thereafter deprive the plaintiffs of the right to initiate and file new rates for their services.

2. The Court erred in concluding as a matter of law that the schedule of rates and charges which on October 19, 1935, the plaintiffs tendered to the Secretary of Agriculture for filing was properly tendered and should have been retained and filed in the office of the Secretary of Agriculture.

3. The Court erred in concluding as a matter of law that the rejection by the Secretary of Agriculture of the schedule of rates and charges tendered by the plaintiffs on October 19, 1935, and the refusal of the Secretary of Agriculture to file such schedule, was unreasonable, arbitrary, and without authority of law.

4. The Court erred in concluding as a matter of law that the fact that at the time of the tender of the schedule of rates and charges in question to the Secretary of Agriculture for filing there was pending and undetermined in the United States Supreme
55 Court an appeal from the decree of the District Court which had held valid a prior schedule of rates fixed by the Secretary, did not, during such pendency, deprive market agencies of the right to initiate new rates pursuant to the Packers and Stockyards Act.

5. The Court erred in concluding as a matter of law that upon the record the schedule of rates as posted and as tendered on October 19, 1935, to the Secretary of Agriculture for filing became effective on November 1, 1935, and from that date constituted the lawful rates and charges for market agency services of the plaintiffs unless and until such schedule should be suspended by the Secretary of Agriculture.

6. The Court erred in concluding as a matter of law that under the Packers and Stockyards Act of 1921 the market agencies are the primary rate makers for their services.

7. The Court erred in not finding that after the Secretary of Agriculture has exercised his authority to prescribe just and reasonable rates and charges or maximum or minimum rates and charges applicable to the plaintiffs, the plaintiffs have no lawful right to file a schedule of new rates and charges.

8. The Court erred in not finding that the schedule of rates and charges which on October 19, 1935, the plaintiffs tendered to the Secretary of Agriculture for filing was unlawfully tendered and was properly rejected by the Secretary.

9. The Court erred in not finding that the Secretary of Agriculture properly and lawfully rejected the schedule of rates and charges tendered by the plaintiffs on October 19, 1935, and in not finding that his refusal to file such schedule was proper and lawful.

10. The Court erred in not finding that after rates and charges had been prescribed by the Secretary of Agriculture pursuant to authority lawfully conferred by the Packers and Stockyards Act,

the plaintiffs had no legal right to initiate new rates, and in not finding that the Packers and Stockyards Act does not confer
56 authority upon plaintiffs to initiate new rates under such circumstances.

11. The Court erred in not finding that the schedule of rates as posted and as tendered on October 19, 1935, to the Secretary of Agriculture for filing is null, void, and of no effect.

12. The Court erred in finding and concluding that immediate and irreparable injury and damage to the plaintiffs would in all likelihood ensue unless an interlocutory injunction be ordered as prayed.

13. The Court erred in not finding that the plaintiffs have an adequate remedy at law.

14. The Court erred in granting an interlocutory injunction and in entering the order for an interlocutory injunction.

15. The Court erred in failing to provide in the order for an interlocutory injunction for the impounding of the difference between the rates and charges prescribed by the orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, respectively, and the rates and charges which will be collected by the plaintiffs pursuant to such interlocutory injunction.

JOHN DICKINSON,
Assistant Attorney General.
WENDELL BERGE,
Special Assistant to the Attorney General.

57 In United States District Court

[Title omitted.]

Order allowing appeal

Dec. 18, 1935

This 18th day of December 1935, came the defendants, by their attorneys, and filed herein and presented to this Court their petition praying for the allowance of an appeal to the Supreme Court of the United States from the order for interlocutory injunction entered by this Court on the 3rd day of December 1935, and assignment of errors intended to be urged by them, and praying also that a transcript of record, proceedings, and papers upon which the order for interlocutory injunction herein was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

On consideration whereof, the Court being advised in the premises.

It is ordered that an appeal to the Supreme Court of the United States from the order for interlocutory injunction heretofore made and entered herein be, and the same is, hereby allowed: and

It is further ordered that a certified transcript of the record, proceedings, and papers on which the order for interlocutory
58 injunction was made and entered be transmitted forthwith to the Supreme Court of the United States.

SAMUEL ALSCHULER,
Circuit Judge.
JAMES H. WILKERSON,
District Judge.
JOHN P. BARNES,
District Judge.

59 In United States District Court

[Title omitted.]

Stipulated praecipe for transcript of record on appeal

Filed Dec. 18, 1935

It is hereby stipulated by and between counsel for the respective parties hereto that the transcript of record on appeal in the above entitled cause shall consist of the items specified below. The Clerk of this Court will please prepare a transcript of record to be transmitted to the Supreme Court of the United States in pursuance of the appeal heretofore taken, and include therein the following:

1. Petition and complaint, filed October 31, 1935, including therein the exhibit thereto attached, namely the schedule of rates issued by the petitioners and appellees on October 19, 1935, to be effective November 1, 1935.
2. Affidavit of E. M. Hughes, filed November 1, 1935.
3. Order of Honorable John P. Barnes, District Judge, dated November 1, 1935, convening statutory court and setting hearing on November 8, 1935, on application for interlocutory injunction.
4. Per curiam memorandum opinion of the Court, filed November 19, 1935.

60 5. Statement, Findings of Fact, and Conclusions of Law, entered December 3, 1935.
6. Order for interlocutory injunction, entered December 3, 1935.
7. Petition for appeal, filed December , 1935.
8. Assignment of Errors, filed December , 1935.
9. Order allowing appeal, entered December , 1935.
10. Citation on Appeal, dated December , 1935.
11. Statement of appellants pursuant to Rule 12 of the Supreme Court respecting jurisdiction on appeal.
12. Acknowledgement of service upon petitioners and appellees of Citation on Appeal and other papers relating to the appeal.
13. This praecipe.

It is stipulated and agreed that the foregoing praecipe is correct and sufficient, and the petitioners- appellees waive service of a copy thereof and of notice of filing thereof.

JOHN DICKINSON,
WENDELL BERGE,
Counsel for Defendants-Appellants.
GEO. I. HAIGHT,
Counsel for Petitioners-Appellees.

61 [Clerk's Certificate to foregoing transcript omitted in printing.]

62 [Citation in usual form showing service on Geo. I. Haight et al., filed Dec. 18, 1935, omitted in printing.]

64 In Supreme Court of the United States

Statement of points to be relied upon and designation of the parts of the record to be printed

Filed Dec. 27, 1935

I

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

1. Title III of the Packers and Stockyards Act (425 Stat. 159; U. S. C. A., Title 7, Secs. 181–229) provides that after rates and charges have been prescribed by order of the Secretary of Agriculture, they shall be thereafter observed and that the Secretary shall have the power to order that an operator in the stockyards shall not thereafter publish, demand, or collect any rate or charge in excess thereof, and that rates prescribed shall continue in force until the further order of the Secretary or unless such rates are suspended or modified by the Secretary or suspended or set aside by a court of competent jurisdiction; and after rates and charges have been prescribed by order of the Secretary, the Act does
65 not authorize the market agencies to publish and make effective schedules of rates and charges which do not comply with the order of the Secretary (Assignment of Errors Nos. 1, 4, 6, 7, 10).

2. Inasmuch as the Secretary of Agriculture had prescribed maximum rates and charges by orders dated January 8, 1934, and March 12, 1934, applicable to market agencies doing business on the Chicago stockyards, and those maximum rates and charges had been upheld as lawful by decree of the United States District Court for the Northern District of Illinois, dated March 19, 1935, the schedule of rates and charges published by such market agencies October 19, 1935, to be effective November 1, 1935 (since it did not comply with said orders of the Secretary), was null, void, and of no effect, and

the Secretary of Agriculture properly refused to receive the same for filing (Assignment of Errors Nos. 2, 3, 5, 8, 9, 11).

3. The Court erred in finding and concluding that immediate and irreparable injury and damage to the appellees would in all likelihood ensue unless an interlocutory injunction be ordered as prayed (Assignment of Errors No. 12).

4. The Court erred in not finding that the appellees had an adequate remedy at law (Assignment of Errors No. 13).

5. The Court erred in granting an interlocutory injunction (Assignment of Errors No. 14).

6. The Court erred in failing to provide in the order for an interlocutory injunction for the impounding of the difference between the rates and charges prescribed by the orders of the Secretary and rates and charges which will be collected by the appellees pursuant to such interlocutory injunction (Assignment of Errors No. 15).

66

II

And the appellants further state that all of the record certified by the District Court and filed in this Court should be printed by the Clerk of this Court for the hearing of this cause.

GOLDEN W. BELL,
Acting Solicitor General.

Dated December 27, 1935.

[File endorsement omitted.]

(Endorsement on cover:) File No. 40,210. N. Illinois, D. C. U. S. Term No. 656. The United States of America, et al., appellants, *vs.* J. M. Corrick and L. J. Keleher, a Partnership doing business as Adams, Corrick & Keleher, et al. Filed December 23, 1935. Term No. 656 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1936